

Frank J. Rubino
Corporation Counsel of the City of Yonkers
40 South Broadway
City Hall, Room 300
Yonkers, New York 10701
By: Rory McCormick (RM 3994)
Associate Corporation Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
NICHOLAS SATCHELL,

Plaintiff,

ANSWER

-against-

07 Civ. 9513 (NRB)

THE CITY OF YONKERS and P.O. JOHN
DOE, Shield No. 5296 Individually and in
his official capacity

Defendants.

-----X

Defendant, THE CITY OF YONKERS, answering the Complaint herein, by
Frank J. Rubino, Corporation Counsel of the City of Yonkers, its attorney:

FIRST: Deny the allegations set forth in paragraph "1" of the Complaint; except those portions containing conclusions of law which accordingly require no response; and except admit that plaintiff purports to proceed as stated therein.

SECOND: Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs "2", "3" and "4" of the Complaint, except those conclusions of law which accordingly require no response; and except admit that Plaintiff purports to proceed as stated therein.

THIRD: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "7", "10", "14", "15", "16", "17", "22" and "23" of the Complaint.

FOURTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated "9" of the Complaint and respectfully refers all questions of law to the Court; except admit that the City of Yonkers has a Police Department.

FIFTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "11", "12", "13", "18" and "24" of the Complaint and respectfully refers all questions of law to the Court.

SIXTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "19" and "20" of the Complaint and respectfully refers all questions of law to the Court.

SEVENTH: Denies upon information and belief, each and every allegation set forth in paragraph designated "21" of the Complaint.

ANSWERING THE FIRST CLAIM FOR RELIEF

EIGHTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraphs designated "1" through "25" of the Complaint with the same force and effect as though fully set forth herein at length.

NINTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated "26" of the Complaint and respectfully refers all questions of law to the Court.

TENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "27", "28", "29", "30", "31a", "31b", "31c", "31d", "31e", "31f" of the Complaint and respectfully refers all questions of law to the Court.

ELEVENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraphs designated "1" through "32" of the Complaint with the same force and effect as though fully set forth herein at length.

TWELFTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in paragraph "33" of the Complaint, except admits that a paper writing purporting to be a notice of claim was received in the Yonkers Corporation Counsel's Office; and respectfully refers all questions of law to the Court.

THIRTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "35", "36" and "37" of the Complaint and respectfully refers all questions of law to the Court.

FOURTEENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraphs designated "1" through "38" of the Complaint with the same force and effect as though fully set forth herein at length.

FIFTEENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "39" and "40" of the Complaint and respectfully refers all questions of law to the Court.

SIXTEENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraphs

designated "1" through "41" of the Complaint with the same force and effect as though fully set forth herein at length.

SEVENTEENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "42", "43" and "44" of the Complaint and respectfully refers all questions of law to the Court.

EIGHTEENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraphs designated "1" through "45" of the Complaint with the same force and effect as though fully set forth herein at length.

NINETEENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "46", "47" and "48" of the Complaint and respectfully refers all questions of law to the Court.

TWENTIETH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraphs designated "1" through "49" of the Complaint with the same force and effect as though fully set forth herein at length.

TWENTY-FIRST: Denies upon information and belief, each and every allegation set forth in paragraphs designated "50", "51", "52" and "53" of the Complaint and respectfully refers all questions of law to the Court.

TWENTY-SECOND: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraphs designated "1" through "54" of the Complaint with the same force and effect as though fully set forth herein at length.

TWENTY-THIRD: Denies upon information and belief, each and every allegation set forth in paragraphs designated “55”, “56”, “57”, “58” and “59” of the Complaint and respectfully refers all questions of law to the Court.

TWENTY-FOURTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraphs designated “1” through “60” of the Complaint with the same force and effect as though fully set forth herein at length.

TWENTY-FIFTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated “61” of the Verified Complaint.

TWENTY-SIXTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated “62” and “63” of the Complaint and respectfully refers all questions of law to the Court.

TWENTY-SEVENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated “64a”, “64b”, “64c” and “64d” of the Complaint and respectfully refers all questions of law to the Court and except admit that Plaintiff purports to proceed as stated therein.

TWENTY-EIGHTH: Denies all allegations in the “Wherefore” portion of the Complaint, except those conclusions of law which accordingly require no response; and except admits that Plaintiff purports to proceed as stated therein.

AS AND FOR A FIRST DEFENSE

TWENTY-NINETH: That if any physical force was used to effect the arrest of the Plaintiff, only such physical force was used to the extent it was reasonably believed to

be necessary to effect the arrest of the Plaintiff, whom the arresting officer reasonably believed to have committed an offense.

AS AND FOR A SECOND DEFENSE

THIRTIETH: That the Plaintiff's arrest and prosecution were not effectuated falsely, maliciously or without probable cause. On the contrary, there was reasonable and just cause for believing the Plaintiff guilty of a criminal act and in arresting and prosecuting the Plaintiff, the Defendant, CITY OF YONKERS, was not actuated by malice nor were any of its agents, servants and/or employees so actuated.

AS AND FOR A THIRD DEFENSE

THIRTY-FIRST: The Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A FOURTH DEFENSE

THIRTY-SECOND: Defendant's actions were in good faith and for good cause including, but not limited to, legitimate, rational, and appropriate governmental interests.

AS AND FOR A FIFTH DEFENSE

THIRTY-THIRD: Injuries and damages to the Plaintiff were caused in whole or in part or were contributed to by the culpable conduct and want of care on the part of Plaintiff.

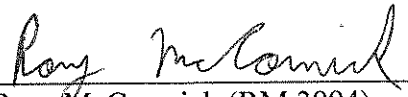
AS AND FOR A SIXTH DEFENSE

THIRTY-FOURTH: At all times relevant to the Complaint, Defendant has been in compliance with all requirements under the laws cited by the Complaint.

WHEREFORE, Defendant requests judgment dismissing the Complaint together with costs, disbursements, and attorney's fees and any other relief the Court deems just and proper.

Dated: November 14, 2007
Yonkers, New York

Frank J. Rubino
Corporation Counsel of the City of Yonkers
40 South Broadway
City Hall, Room 300
Yonkers, New York 10701


By: Rory McCormick (RM 3994)
Associate Corporation Counsel

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2007 I caused a true and correct copy of the foregoing ANSWER to be served by mail upon:

Balestriere PLLC
225 Broadway, Suite 2700
New York, New York 10007

Dated: November 15, 2007
Yonkers, New York



Rory McCormick